

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HERBERT LEE GREER,

Defendant-Appellant.

UNPUBLISHED

December 10, 2013

No. 311952

Calhoun Circuit Court

LC No. 12-000234-FH

Before: MURPHY, C.J., and FITZGERALD and BORRELLO, JJ.

PER CURIAM.

A jury convicted defendant of third-degree home invasion, MCL 750.110a(4), and unlawfully driving away a motor vehicle, MCL 750.413. The trial court sentenced defendant as a fourth-offense offender, MCL 769.12, to concurrent prison terms of 40 to 120 months for each conviction. Defendant appeals that sentence as of right. We affirm.

The recommended minimum sentencing guidelines range for defendant's conviction as a fourth-offense habitual offender is 12 to 48 months. This recommended minimum sentence range falls within a "straddle cell" under MCL 769.34(4)(c).

When the upper and lower limits of the recommended minimum sentence range meet certain criteria, a defendant is eligible for an intermediate sanction. If the upper limit of the minimum sentence range exceeds 18 months and the lower limit is 12 months or less, the defendant's sentence range is in a "straddle." When the range is in a straddle cell, the sentencing court may elect either to sentence the defendant to a prison term with the minimum portion of the indeterminate sentence within the guidelines range or to impose an intermediate sanction, absent a departure. [*People v Harper*, 479 Mich 599, 617; 739 NW2d 523 (2007).]

MCL 769.31 governs the imposition of a sentence for straddle cells and provides the following relevant definitions:

(a) "Departure" means a sentence imposed that is not within the appropriate minimum sentence range established under the sentencing guidelines set forth in chapter XVII. [MCL 777.1 *et seq.*]

(b) “Intermediate sanction” means probation or any sanction, other than imprisonment in a state prison or state reformatory, that may lawfully be imposed.

....

Defendant’s minimum term is within the minimum recommended guidelines range and therefore is not a departure. Defendant does not argue that the guidelines were misscored or that the trial court relied on inaccurate information in imposing sentence.¹ We conclude that the trial court did not abuse its discretion by sentencing defendant to prison rather than to an intermediate sanction.² Defendant has an extensive prior adult record consisting of 10 felonies and 16 misdemeanors, and he was on parole at the time he committed the present offenses. Defendant had demonstrated an inability to conform his conduct to the requirements of the law.

Affirmed.

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald
/s/ Stephen L. Borrello

¹ If a sentence is within the guidelines range, a challenge to that sentence is preserved only if “there was a scoring error or inaccurate information was relied upon in determining the sentence and the issue was raised at sentencing, in a motion for resentencing, or in a motion to remand” filed with this Court. *People v Kimble*, 470 Mich 305, 310-311; 684 NW2d 669 (2004), citing MCL 769.34(10).

² Defendant’s reliance on MCL 769.34(4)(a) in support of his argument that the court was required to impose an intermediate sanction unless the court stated on the record a substantial and compelling reason to sentence him to the jurisdiction of the department of corrections is misplaced. The upper limit of the recommended minimum sentence range for his offense was greater than 18 months and, therefore, MCL 769.34(4)(a) is inapplicable.